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2 December 1988

MEMORANDUM FOR: Director of Central Intelligence

FROM: Russell J. Bruemmer  
General Counsel

SUBJECT: Options Paper on Implementation of  
New Drug Control Legislation

1. As you requested after you were briefed on the recently enacted Anti-Drug Abuse Act of 1988, this memorandum outlines some of the threshold issues posed by the legislation's creation of the Director of National Drug Control Policy (the "Drug Czar"). After briefly summarizing the legislation, this memorandum presents various alternatives for your consideration on these threshold issues.

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2. The memorandum is based on an analysis of the legislation (made more difficult by the absence of extensive legislative history), the studies completed by the Office of the Inspector General in June 1988 (the "IG Inspection Report") and the National Intelligence Officer for Counternarcotics in July 1988 (the "NIO/CN Study") on the subject of intelligence support for counternarcotics, and a general discussion of senior officials held at a meeting on 21 November 1988. The

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SUBJECT: Options Paper on Implementation of New Drug Control Legislation

21 November discussion included: the Executive Director, the Deputy Director for Intelligence, the Deputy Director for Science and Technology, the Inspector General, the Associate Deputy Director for Operations, the Comptroller, the Deputy Director of the Intelligence Community Staff, the Director of Congressional Affairs, the NIO/Counternarcotics, the Counsellor to the DCI, and the Special Assistant to the DCI. This memorandum has been circulated among these individuals and, to the extent feasible, reflects comments received from them.

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#### I. SUMMARY OF LEGISLATION

3. Drug Czar's Status and Appointment. On 18 November 1988, the President signed the "Anti-Drug Abuse Act of 1988." Title I of the Act creates the Drug Czar. The Drug Czar enjoys cabinet rank, is "principal advisor to the National Security Council (NSC) on national drug control policy," and may attend NSC meetings at the President's direction. The Drug Czar's office will be part of the Executive Office of the President.



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4. The Drug Czar is appointed by the President and confirmed by the Senate, as are the Drug Czar's three principal

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

deputies. President-elect Bush could announce his nominee for first Drug Czar within the next few weeks. Thirty days after the Drug Czar's Senate confirmation, the existing National Drug Policy Board and the White House Office of Drug Abuse Policy terminate.

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5. The Drug Czar is authorized to hire such officers and employees as are necessary to carry out the functions assigned by the Act. Personnel may be temporarily detailed from other Federal agencies only with the concurrence of the agency head, but once detailed, such employees are subject to the Drug Czar's control for purposes of evaluation and compensation.

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6. Drug Czar's Programmatic Authorities. In comparison to certain other previously introduced bills, the Drug Czar has relatively limited and specific authorities under the new legislation. One of the Drug Czar's principal duties is to draft annually the "National Drug Control Strategy" and to coordinate and oversee efforts to fulfill the Strategy by designated "National Drug Control Program (NDCP) agencies." The first Strategy must be submitted to Congress within six months after the Drug Czar's confirmation. The Strategy is to include "long-range goals", "short-term measurable objectives",

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

and "priorities" for both supply and demand reduction. Although it is the President who is required by the Act to submit the Strategy to Congress, it is unclear whether the Strategy will have the force of a Presidential directive.

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7. The Drug Czar cannot reallocate an NDCP agency's personnel or modify its policies or budgets. The Drug Czar can only make recommendations to the President concerning organization and personnel allocation in "agencies engaged in drug enforcement." Each NDCP agency must also notify the Drug Czar of any proposed change in policies relating to its drug control programs. In addition, the Drug Czar can notify any NDCP agency that its policies are not "in compliance with" the agency's responsibilities under the Strategy. A copy of any such notification is sent to the President.

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8. Drug Czar's Budget Authorities. In addition, each Federal agency with "responsibilities under the...Strategy" is required to submit its "drug control budget request" to the Drug Czar prior to submitting its budget to OMB. The Drug Czar uses those budget requests to prepare "a consolidated National Drug Control Program budget," which the Drug Czar then transmits to the President and Congress.

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SUBJECT: Options Paper on Implementation of New Drug Control Legislation

9. The Drug Czar is not authorized to modify an NDCP agency's budget, but can only certify whether the proposed budget is adequate to meet the agency's responsibilities under the Strategy. The Drug Czar can, however, block certain reprogrammings from the drug control budgets submitted by the NDCP agencies, and is required to report to Congress quarterly on the "need for any reprogramming or transfers" for drug control activities.

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10. Even the Drug Czar's limited powers cannot be exercised over all federal agencies, but only over "National Drug Control Program agencies", i.e. agencies with responsibilities under the Strategy. Not all federal agencies are NDCP agencies; only those "designated " by the President or jointly agreed to by the Drug Czar and the agency or department head. Thus, in contrast to prior legislation considered by Congress, neither the CIA nor other entities in the Intelligence Community come automatically within the Drug Czar's responsibilities. It is likely that the parent organizations of many elements in the Intelligence Community will be designated, including the Departments of State (Bureau of Intelligence and Research), Defense (the Defense Intelligence Agency and the National Security Agency), and

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

Justice (Federal Bureau of Investigation). It is not clear at this time how designation of the parent agency will affect the Intelligence Community component.

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11. In addition, an agency may be designated a "lead agency" with "principal responsibility" for carrying out a particular area of the Strategy. A lead agency must be notified (in advance unless exigent circumstances require otherwise) when subordinate agencies conduct "major supply reduction" activities in the lead agency's area of principal responsibility. The lead agency notifies the Drug Czar when it objects to the conduct of a subordinate agency.

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12. Protection of DCI's Authorities. Besides these general limitations, the Drug Czar is specifically limited in actions with respect to the DCI and the Intelligence Community. The Drug Czar is "subject to laws governing disclosure of information." Similarly, the Drug Czar's powers and duties must be exercised "consistent with" the National Security Act of 1947. This provision will allow the DCI to argue against any challenge to his programmatic and budgetary autonomy under the 1947 Act and Executive Order 12333 promulgated pursuant to that Act. The DCI is also directed to

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

prescribe such regulations as may be necessary to protect  
"information provided pursuant to this Act regarding  
intelligence sources and methods."

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13. Subject to these limits, however, the Act directs the  
DCI to "render full assistance and support" to the Drug Czar  
"to the fullest extent possible." In addition, the Act  
includes a nonbinding sense of the Congress that Intelligence  
Community agencies "should be more actively involved in the  
effort to combat illicit international drug trafficking."

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14. The creation of the Drug Czar presents many issues for  
the CIA and the Intelligence Community. The following four,  
however, appear to be the most pressing: 1) designation as an  
NDCP agency; 2) budget issues; 3) intelligence assistance to  
the Drug Czar; and, 4) the role, if any, of the Drug Czar in  
counternarcotics covert action activities. The DCI and the  
Intelligence Community appear to have considerable flexibility  
in dealing with the Drug Czar. How that flexibility should be  
exercised is discussed below.

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SECRET

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

## II. PRELIMINARY ORGANIZATIONAL ISSUE

15. CIA Internal Reorganization. The bulk of the discussion at the 21 November meeting dealt with whether CIA and other elements of the Intelligence Community should resist designation as NDCP agencies, and if not, how such designation should be effected. That discussion, as to which there was little consensus, is summarized in the next section.

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16. There was, however, virtually unanimous consensus in the 21 November meeting that initially CIA senior management should focus on how to organize CIA resources to address counternarcotics issues more effectively. Most present at the 21 November discussion agreed that certain basic decisions about CIA's role in counternarcotics should be made promptly. These decisions, and any resulting organizational adjustments, are viewed as a necessary first step before CIA addresses the issues presented by the creation of the Drug Czar.

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17. The internal reorganization question is addressed in both the IG Inspection Report and the NIO/CN Study, and will be the subject of the recommendations you have asked the Executive Director to prepare. Those studies address the pros and cons



SUBJECT: Options Paper on Implementation of New Drug Control Legislation

of creating a Counternarcotics Center or of adopting other mechanisms to centralize CIA counternarcotics support. The discussion at the 21 November meeting did not attempt to duplicate those efforts.

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18. The clear consensus of the 21 November discussion, however, was that CIA would benefit significantly, both internally and in dealing with the Drug Czar, if a centralizing mechanism (such as a working committee or a task force) is established or, at a minimum, a senior official from the DO or DI (the two "operating" elements in current counternarcotics efforts) is designated as the Agency's focal point for information and tasking within CIA and the DCI's primary representative on counternarcotics issues to the Intelligence Community. The designated officer would then be in the best position to deal with the Drug Czar's office on behalf of CIA and to influence the intelligence portions of the Strategy.

25X1

19. Intelligence Community Reorganization. The discussion at the 21 November meeting also touched on the role of the Intelligence Community in dealing with the Drug Czar. During the development of this legislation, the National Security Agency and elements of the Department of Justice expressed an

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

expectation that the DCI would generally protect Intelligence Community equities in dealings with the Drug Czar. Chairman Stokes made a floor statement prior to passage of the House bill emphasizing that creation of the Drug Czar did not detract from the DCI's Intelligence Community budgetary powers. Moreover, the duty imposed on the DCI by the legislation to promulgate regulations protecting intelligence sources and methods will require the DCI to address Intelligence Community equities in the area of information protection.

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20. As a result, the 21 November discussion also identified the idea that the Intelligence Community's efforts should be focused in a manner similar to that recommended for CIA in paragraph 18 in order to coordinate counternarcotics issues. Most participants seemed to favor a working level committee chaired by the CIA designated officer. There was less support for a permanent senior-level committee (e.g., a Counternarcotics IG), although everyone recognized that senior level officials would have to meet on a regular basis to resolve policy level questions on the counternarcotics issue.

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SUBJECT: Options Paper on Implementation of New Drug Control Legislation

III. DESIGNATION ISSUE

21. Designation of CIA As An NDCP Agency. The first question actually arising under the Act is whether and how the CIA (and other Intelligence Community agencies) should be "designated" as "National Drug Control Program (NDCP) agencies". There was disagreement in the group on whether CIA should be designated, and a full range of views was expressed. Although the resolution of this issue will depend ultimately on the views of the Drug Czar and the President, the DCI will be in a better position to influence this decision if this matter is considered prior to the Drug Czar's confirmation.

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22. The alternatives identified at the 21 November meeting are as follows:

a. Resist any designation that would place Intelligence Community agencies under full range of the Drug Czar's "powers".

b. Designate only relevant components in CIA (e.g. OGI, SAS, etc.) and other IC agencies as NDCP agencies.

c. Designate CIA and other Intelligence Community agencies separately as NDCP agencies, without an IC coordinating mechanism.

d. Designate a to-be-formed IC committee as the "NDCP agency" to deal with the Drug Czar for all IC agencies collectively.

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

e. Designate CIA as a "lead agency" for certain intelligence activities, designate other IC agencies as appropriate, and form an IC committee to coordinate overall IC equities.

Because alternatives b, c, and d seem to be either impractical or less desirable than the others, the discussion at the 21 November meeting focused on alternatives a and e.

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23. There was strong (but minority) support at the 21 November meeting for the first alternative, resisting designation to limit the role of the Drug Czar in intelligence activities. In part, this view reflects a desire to protect the DCI's authorities to the fullest extent possible (especially in the budgetary and tasking areas) and a concern that sources and methods will not be protected if the Drug Czar has an active role in intelligence activities. In addition, this view reflects concerns about the relatively disorganized state of, and the lack of clear policy direction for, current US Government counternarcotics efforts, especially in the use of intelligence information. The concern was expressed that designation could also lead to more direct involvement in law enforcement activities.

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SECRET

SUBJECT: Options Paper on Implementation of New Drug Control Legislation

24. It should be noted that those opposing designation were not advocating that CIA and the Intelligence Community refuse to cooperate with the Drug Czar. Indeed, they believe the DCI and the Intelligence Community can give the Czar vigorous and, perhaps, even increased support, and yet, remain outside the NDCP agency structure. They urged that the DCI and/or the Intelligence Community seek to support the Czar from the "observer" status, providing "off-line" services to the Drug Czar's efforts.

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25. All present at the 21 November discussion recognized that if CIA is not "designated" as an NDCP agency, it will have little or no direct role in the activities of the Drug Czar. The CIA counternarcotics budget would not be submitted to the Drug Czar nor will the Drug Czar be able to assign CIA and the Intelligence Community a role in the annual Strategy. Non-designation of CIA would also reduce the possibility that intelligence information will be improperly disclosed or that the Intelligence Community's budget or programs will be adversely affected.

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26. The majority of participants in the discussion, however, agreed that resisting designation as an NDCP agency

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

may be politically impossible. The DCI is presently an ex officio member of the existing Drug Policy Board structure. CIA and other Intelligence Community agencies are already involved in counternarcotics efforts to a substantial degree and could make an even more significant contribution if the Drug Czar succeeds in eliminating some of the confusion over US Government policy in this area. Thus, the Drug Czar (and the President) are likely to seek more Intelligence Community support. Moreover, many members of Congress also expect CIA to play an active role in the NDCP process. As such, outright stonewalling will be viewed negatively, might be counter-productive, and in any event, would be ineffective if the President ultimately designates CIA as an NDCP agency. As importantly, resisting designation could deprive CIA and the Intelligence Community of a formal role in the counternarcotics process, thereby eliminating a direct opportunity to protect intelligence equities. Moreover, because of the Drug Czar's role as principal advisor to the NSC, the Drug Czar will have considerable access to Intelligence Community information (as do DEA and other counternarcotics agencies now) whether or not CIA and the Intelligence Community are designated as NDCP agencies.

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SUBJECT: Options Paper on Implementation of New Drug Control Legislation

27. Some of the negative aspects of designation could be reduced or eliminated by arranging for a special or limited purpose designation for CIA and other Intelligence Community agencies not involved in law enforcement. Opting for this middle course would allow these agencies to support the Drug Czar while not exposing them to the problems of being in the forefront of what is primarily a law enforcement effort. Moreover, a special designation would also help address some of the concerns noted in sections IV and VI below. It should be noted, however, that the Act does not explicitly provide for such a limited purpose designation, and thus, such a designation would require the acquiescence of the Drug Czar, and possibly the President.

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28. Alternatively or additionally, CIA could seek to be designated the "lead" agency for certain intelligence activities. Designating the CIA as the "lead" agency for counternarcotics foreign intelligence (or possibly, for "strategic" foreign intelligence) and for counternarcotics covert actions would place CIA in a position to exert considerable influence over issues of interest to the Intelligence Community. This position of influence could, in fact, prove to be the most effective means of protecting Intelligence Community equities.

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SECRET

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

#### IV. BUDGET ISSUES

29. Even though the Drug Czar cannot unilaterally modify the narcotics budgets of NDCP agencies, he is given the responsible for reviewing such budgets and does exercise some degree of reprogramming control. Thus, if CIA (or any other Intelligence Community agency) is designated as an NDCP agency, the Drug Czar will have access to that agency's counternarcotics budget and can restrict the DCI's reprogramming flexibility for those funds. Obviously, such information would be extremely sensitive, most especially the covert action portions. The question is thus raised as to what, if any, steps should be taken to protect CIA's budget equities. (It should be noted that Congress already receives significant detail about the CIA's counternarcotics budget as part of the annual budget justification book.)

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30. If the CIA is designated an NDCP agency, it cannot refuse Drug Czar access to its budget. It should, however, be possible (and some would suggest necessary) to limit access the this budget information within the Drug Czar's office in order to protect intelligence sources and methods and other sensitive information. This could be accomplished through the



SECRET

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

regulations the DCI will promulgate and through the development of joint procedures with the Drug Czar for handling our budget. In particular, the DCI should insist that the Intelligence Community portion of the drug control budget be handled in a separate classified annex that would only be available to a limited number of staff in the Drug Czar's office and to those at OMB and the White House who now review the Intelligence Community's budget. The DCI should also insist that when the budget is transmitted to Congress, the intelligence portions are sent only those committees that otherwise review intelligence budgets.

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V. INTELLIGENCE ASSISTANCE TO DRUG CZAR

31. The Drug Czar is likely to require assistance in receiving and handling information necessary to deal with intelligence-related issues. The Intelligence Community has a reciprocal need for ensuring intelligence materials are properly handled. The 21 November discussion agreed that CIA should detail sufficient personnel to the Drug Czar to regulate and protect intelligence information. Once detailed, these personnel will effectively be under the Drug Czar's control. This alternative is preferable to the possibility that the Drug

SECRET

SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

34. I am available to discuss these issues with you at  
your convenience. I would also be happy to reconstitute the  
21 November group for further discussion with you if that would  
be useful.

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SUBJECT: Options Paper on Implementation of New Drug Control  
Legislation

Czar will hire less experienced personnel to deal with  
intelligence information.

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#### VI. DRUG CZAR AND COVERT ACTION

32. As previously noted, if CIA is designated as an NDCP agency, its counternarcotics budget will be reviewed by the Drug Czar. This would include those portions of the budget that deal with counternarcotics covert actions. Even if CIA is not designated, however, the Drug Czar will, pursuant to statute, still be the NSC's principal advisor on narcotics issues and would almost certainly assert a right to attend NSPG meetings at which counternarcotics covert action proposals are discussed. He may also chair a RIG-like structure.

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33. Accordingly, rather than attempt to exclude the Drug Czar from access to covert action information, the CIA should make relevant covert action information available to the Drug Czar under strict compartmentation controls, and should take the necessary steps, including education of the Drug Czar to insure that the consideration and implementation of such covert actions remains within existing CIA and NSPG structures.

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